

Institutional Building Act (Sections 2332-1 to 2332-13, inclusive, of the General Code) unconstitutional in its entirety.

2. Such decision of the Supreme Court does not prevent payment of the salary and compensation of the officers and employes of the Public Institutional Building Authority employed under Sections 2332-2 and 2332-3 of the General Code.

Respectfully,

THOMAS J. HERBERT,

*Attorney General.*

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1013.

TRANSPORTATION—SCHOOL BUS—BOARD COUNTY COMMISSIONERS—COUNTY CHILDREN'S HOME—NO AUTHORITY TO EXPEND FUNDS TO TRANSPORT SUCH CHILDREN TO SCHOOL—DUTY BOARD OF EDUCATION IN SCHOOL DISTRICT TO EDUCATE SUCH CHILDREN—PROVIDE TRANSPORTATION.

*SYLLABUS:*

1. *No legal authority exists for a board of county commissioners or the managing officers of a county children's home to purchase a school bus for the transportation of the children in the said county home to school, or to expend any funds whatever for the purpose of transporting such children to school.*

2. *It is the duty of a board of education in a school district in which is located a county children's home to either maintain a school for the instruction of the children in said children's home, at or near the home, or to provide for their admission into the public schools of the district, and to provide transportation for those pupils to the school to which they are assigned, the same as would other children similarly situated be entitled to transportation.*

COLUMBUS, OHIO, August 10, 1939.

HON. D. H. JACKMAN, *Prosecuting Attorney, London, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

"The managing officers of our Madison County Children's Home and the Deercreek Township Board of Education have presented a problem for solution which I think requires the assistance of your office.

The Children's Home is located in the Deercreek Township Rural School District and it is anticipated that some sixty chil-

dren, inmates of the home, will attend the Deercreek Township Schools this coming term. This means a bus haul of about two and one-half miles.

The problem now is whether the Children's Home authorities can purchase a school bus of sufficient seating capacity to transport sixty or more children, in their own name and then enter into a contract with the Deercreek Township Board of Education whereby the board of education would pay on a contract basis the same as with any private contractor for the hauling of the school children. Of course, the immediate advantage to be gained is that the Children's Home would own the bus and would be permitted to use it for the purpose of transporting the children to social events, church and other matters which probably would not be available to them if the board of education bought the bus.

Since this question is of importance to the board of education and it is necessary to have the order placed immediately, I would appreciate having preferred attention given to this request and that your opinion be in my hands at the very earliest opportunity."

The establishment and maintenance of children's homes in counties by county commissioners is provided for by Sections 3077 et seq., of the General Code of Ohio. Nothing appears in any of the statutes pertaining to the maintenance of a county children's home with respect to the schooling of inmates of the said home and particularly is there nothing contained in these statutes which either expressly or impliedly extends to the county commissioners or the persons in charge of a county children's home the power to provide transportation for children in said home to a school. It is a well settled rule of law that county commissioners have such powers and such only as are expressly extended to them by statute or necessarily implied from statutory provisions granting express powers. Clearly, there is nothing in the statutes providing for the maintenance of children's homes from which it might be said that the power is implied to provide educational opportunities for the children in the home by transporting them to a public or private school, inasmuch as other provision is definitely made by statute for the education and schooling of the inmates of such a home. Section 7676, General Code, provides as follows:

"The inmates of a county, semi-public or district children's home shall have the advantages of the privileges of the public schools. So far as possible such children shall attend such school or schools in the district within which such home is located. Whenever this is impossible and a school is maintained at the home, such school shall be under the control and supervision of

the city, township, village or special board of education, having jurisdiction over the school district within which such home is located. Such board of education shall employ with the approval of the superintendent of the home necessary teachers, and provide books and educational equipment and supplies, and conduct such school in the same manner as a public school within the district. The trustees of the home shall furnish necessary furniture, fuel and light."

Inasmuch as it is definitely made the duty of boards of education by the terms of the above statute to either maintain a school at a county children's home for the instruction of the inmates of the home, or to provide for their admission into the schools in the district where the home is located, such children are entitled to the same privileges as would other children of school age who reside in the district and of course would be entitled to the same right to transportation to the school as would the other children in the district.

In an opinion of a former Attorney General, found in the reported Opinions of the Attorney General for 1924, page 509 it is held:

"Children of high school age and who are otherwise eligible to high school, who are inmates of a county children's home, may be and under certain circumstances should be transported to high school."

The same observation might well be made with respect to children below the high school age and who attend the elementary grades.

I am therefore of the opinion that neither the managing officers of the Madison County Children's Home nor the county commissioners of Madison County are authorized by law to purchase a school bus for the purpose of transporting the children in the children's home to school.

It is the duty of the Board of Education of the Deercreek Township Rural School District in which is located the Madison County Children's Home, to provide for the inmates of said home school privileges either by the maintenance of a school at the children's home or by extending to those children the privileges of the public schools of the district, and such children are entitled to be transported to school to the same extent as are other school children residing in the district.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*